

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Johnson

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Bill
Number: SB 1458

Related Bills: None

Telephone: 845-5404

Amended Date: June 10, 2004 and
June 22, 2004

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Political Reform Act of 1974/FTB Report of Any Audit Shall Be Completed Within One Year of Audit Selected By Commission

SUMMARY

This bill would:

- Add to the Political Reform Act of 1974 (PRA) a one-year deadline for completing Franchise Tax Board (FTB) audit reports conducted on a random basis.
- Modify the statute of limitations for initiating a civil action with reference to the FTB audit report completion deadline date.

This analysis addresses only those provisions that impact the FTB.

SUMMARY OF AMENDMENTS

The June 10, 2004, amendments change the PRA, as discussed below in the "This Bill" portion of the analysis.

The June 22, 2004, amendment is technical in nature and has no impact on the department.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

The purpose of the bill appears to be to accelerate the time in which audit reports for random audits must be filed and to limit the time by which a civil action can be initiated against alleged violators.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2005. The date this bill would become operative is not clear, as discussed below in the "Implementation Considerations" portion of the analysis.

POSITION

No position.

Summary of Suggested Amendments

Department staff is available to work with author's staff to resolve the concerns discussed in this analysis.

Board Position:

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Department Director

Date

Gerald H. Goldberg

7/21/04

ANALYSIS

STATE LAW

Under the PRA, **current state law** requires the FTB to audit campaign disclosure statements filed by political committees, lobbyists, lobbyist employers, and most candidates for elective office, including legislative, constitutional, or local government offices. The Fair Political Practices Commission (FPPC), however, audits statements filed by candidates for state controller and Board of Equalization.

All candidates for statewide office, Supreme Court, Court of Appeal, and Board of Equalization are subject to audit if they have raised or spent \$25,000 or more. All state ballot measure committees that have spent more than \$10,000 and all candidates for the legislature in a special election who have raised or spent \$15,000 or more are subject to audit. The FPPC determines the remainder of the audit workload at the following rates by random drawing:

- 10% of statewide candidates who have raised less and spent less than \$25,000.
- 25% each of lobbying firms and lobbyist employers.
- 25% of senate districts, assembly districts, and contested superior court offices, including candidates who raised or spent \$15,000 or more in the selected races.
- 25% of general purpose committees that have raised or spent more than \$10,000 that have had no prior audit, or that have not previously been determined to be in compliance, in addition to 25% of those committees determined in a prior audit to be in compliance.
- 20 local jurisdictions, including eight counties, eight cities, two school districts, and two special districts. Additional local jurisdictions are selected if time allows.
- Certain candidates for the Board of Administration of the Public Employees' Retirement System

Current state law also provides that any civil action alleging a violation relating to campaign disclosure statements must be filed within four years from the date an audit may begin. Generally, an audit may begin after the last day to file the statement following the related election.

THIS BILL

This bill would add a requirement for FTB to complete audits conducted on a random basis within one year after the person or entity is selected for audit by the FPPC. This bill would also change the statute of limitations for initiating civil action against an alleged campaign statement violator to the earlier of four years from the date an audit could begin or one year from the date FTB forwards its report to the Commission.

IMPLEMENTATION CONSIDERATIONS

Although this bill would impose a new one-year deadline for completing random audits, implementing this bill would not significantly impact the department's programs and operations.

As currently drafted, this bill does not clearly set forth the date that it would become operative. Specifically, it is unclear whether it would only apply to new audit referrals made on or after January 1, 2005, or would also apply to existing audit referrals where the FTB has already commenced the audit. If not clarified, the FTB would implement this bill as if applicable to audits selected on or after January 1, 2005, to coincide with the bill's effective date.

TECHNICAL CONSIDERATIONS

As amended by the bill, section 91011(a) of the Government Code would revise the applicable statute of limitation for filing civil actions to be four years from the date an audit could begin or one year after the FTB report is forwarded to the Commission, "whichever period is less." Changing the phrase to "whichever period expires first" may add clarity.

PROGRAM BACKGROUND

The FTB's Political Reform Audit Program conducts audits of candidates, political committees, and lobbyists as described in the State Law section above. The program works closely with the FPPC, the Secretary of State (SOS), and local filing officers.

The FTB program conducts audits on both a mandatory and random basis, in accordance with generally accepted auditing procedures. Audit procedures include interviewing committee staff, preparing bank reconciliations, evaluating internal controls, and examining documentation of receipts and expenditures, including third party information. The size of the audits varies, involving from tens of millions of dollars and hundreds of hours to complete, to a few thousand dollars and a few hours.

At the conclusion of an audit, each entity receives an audit report containing FTB's opinion of its compliance with the PRA and a description of any material issues. Examples of material issues are personal use of campaign funds, inadequate disclosure of information regarding contributions and expenditures, missing disclosure reports, and failure to maintain required records. Audit reports are public documents and are available for review with the SOS or local filing officer. In addition, they are sent to the FPPC and Attorney General or District Attorney for review.

Generally, the FTB program places a higher priority on conducting mandatory than random audits due to the higher dollar amounts or level of the office or committee. However, other considerations, such as timing of elections, etc., sometimes necessitate re-prioritizing.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

POLICY CONCERNS

This bill would impose a one-year completion deadline for audits selected on a random basis. This requirement would have the effect of raising the priority of random audits over mandatory audits, which usually involve candidates or committees that have raised or expended greater amounts of money. Generally, the FTB audit program area would be able to meet random audit timeframes without additional resources assuming the availability of the disclosure statement filer. However, audits are often delayed for a few months for the convenience of the filer. Filers may be in the middle of campaign statement filing season, involved in election activities, or have treasurers who are tax practitioners and are reluctant to schedule audits during tax filing season. Under these circumstances, the one-year timeframe may be impracticable.

LEGISLATIVE STAFF CONTACT

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